A

RENGARAJAN THANGAVELU v. PP

COURT OF APPEAL, PUTRAJAYA
BALIA YUSOF WAHI JCA
TENGKU MAIMUN JCA
HAMID SULTAN ABU BACKER JCA
B [CRIMINAL APPEAL NO: B-05-348-12-2011]
17 DECEMBER 2014

CRIMINAL LAW: *Dangerous Drugs Act 1952 – Section 39B(1)(a) – Trafficking – Conviction and sentence – Appeal against – Whether trial judge misdirected*
C *himself – Information in appellant's cautioned statement insufficient – Whether good 'Alcontara notice' – Whether reasonable doubt was raised on prosecution's case – Statutory obligation to rebut trafficking on appellant – Whether appellant led credible evidence to support defence – Whether grounds of judgement satisfied s. 308 Criminal Procedure Code – Whether substantial miscarriage of justice occurred –*
D *Whether conviction and sentence safe*

The appellant was found guilty of trafficking in 3,313.1 grams of ketamine, an offence under s. 39B(1)(a) of the Dangerous Drugs Act 1952 ('DDA') and was convicted and sentenced to death. Dissatisfied with the said conviction, the appellant appealed. The appellant submitted that the trial judge had
E misdirected himself when (i) he failed to appreciate that the appellant's cautioned statement had raised reasonable doubt on the prosecution's case; (ii) he failed to appreciate that the investigating officer (SP9) had admitted that he did not conduct any investigation on the contents of the said cautioned statement; and (iii) he had not provided any grounds of judgment, which had
F prejudiced the appellant.

Held (dismissing appeal)
Per Hamid Sultan Abu Backer JCA delivering the judgment of the court:

(1) There was no sufficient information for the police to investigate the case
G in relation to the person 'Pandian' who appellant said had given him the drugs and of the person who the appellant said the drugs were supposed to be handed over to by him as per Pandian's direction. The information in the cautioned statement without sufficient information of Pandian and the purported recipient was a story and was not a good '*Alcontara* notice' for placing an obligation on the part of the prosecution to rebut the same.
H The story, if true, placed the burden on the appellant to rebut trafficking on a balance of probabilities. (para 9)

(2) If an investigation needs to be done, full information need to be given or at least on the face of the information any reasonable tribunal should
I be able to say that there was sufficient information to investigate the story further. The information on this issue must come from the appellant to earn an acquittal. There was no obligation in law in an offence of this nature for the prosecution to 'dig' the information from

the appellant, where the statutory obligation to rebut trafficking was on the appellant. The submission that the investigation officer had not conducted any investigation on the contents of the said cautioned statement had no merit. Further, the notes of evidence did not demonstrate that the appellant had led credible evidence to support his story and to rebut trafficking on the balance of probabilities. (paras 11 & 12)

(3) On the facts and the law in respect of the instant case, the grounds were self-speaking. The fact that the appellant was arrested and found with a large quantity of drugs attracted ss. 2 and 37(d) of the DDA for defence to be called. The prosecution witnesses were mainly government officers and whatever they say as a general rule as to credibility, the court was obliged to accept the evidence pursuant to s. 114(e) of the Evidence Act 1950. There was little doubt that the prosecution had established a *prima facie* case of trafficking at the prosecution stage. Once the defence was called, the burden was on the appellant to rebut trafficking on the balance of probabilities and that may be achieved by giving plausible explanation supported by evidence to create a reasonable doubt. This duty had not been discharged at all by the appellant. The grounds stated for the decision after the end of the defence case was sufficient to satisfy s. 308 of the Criminal Procedure Code but not sufficient to qualify as a speaking judgment. No substantial miscarriage of justice had occurred and it was therefore safe to convict. (para 14)

Bahasa Malaysia *Translation Of Headnotes*

Perayu didapati bersalah mengedar 3,313.1 gram Ketamine, satu kesalahan di bawah s. 39B(1)(a) Akta Dadah Berbahaya 1952 ('ADB'), dan telah disabitkan dan dijatuhkan hukuman mati. Tidak berpuas hati dengan sabitan tersebut, perayu merayu. Perayu menghujahkan bahawa hakim bicara telah tersalah arah apabila (i) beliau gagal mempertimbangkan bahawa pernyataan beramaran telah membangkitkan keraguan munasabah ke atas kes pendakwaan; (ii) beliau gagal mempertimbangkan bahawa pegawai penyiasat (SP9) telah mengakui bahawa dia tidak menjalankan siasatan atas kandungan-kandungan yang terdapat dalam pernyataan beramaran; dan (iii) beliau tidak menyediakan alasan-alasan penghakiman, yang dengan itu telah memprejudiskan perayu.

Diputuskan (menolak rayuan)
Oleh Hamid Sultan Abu Backer HMR menyampaikan penghakiman mahkamah:

(1) Tiada maklumat yang mencukupi untuk pihak polis menyiasat kes berkenaan dengan seorang bernama 'Pandian' yang perayu dakwa telah memberikan dadah tersebut kepadanya dan juga orang yang sepatutnya menerima dadah tersebut daripada perayu atas arahan Pandian.

Maklumat yang terdapat dalam pernyataan beramaran tanpa maklumat yang tidak memadai berkenaan Pandian dan orang didakwa sepatutnya menerima dadah itu adalah satu cerita dan bukan 'notis *Alcontara*' yang baik untuk meletakkan kewajipan ke atas pihak pendakwaan untuk disangkal. Cerita itu, jika benar, meletakkan bebanan atas perayu untuk menyangkal pengedaran atas satu imbangan kebarangkalian.

(2) Jika siasatan harus dilakukan, maklumat sepenuhnya harus diberikan atau sekurang-kurangnya pada permukaan maklumat mana-mana tribunal munasabah boleh menyatakan bahawa terdapat maklumat yang mencukupi untuk menyiasat cerita yang telah diberikan dengan lebih lanjut lagi. Maklumat berkenaan isu ini harus datang daripada perayu untuk dibebaskan. Tiada obligasi dalam undang-undang dalam kesalahan seperti ini untuk pihak pendakwaan 'mengorek' maklumat daripada perayu, di mana kewajipan statutori untuk menyangkal pengedaran terletak pada perayu. Hujahan bahawa pegawai penyiasat tidak menjalankan apa-apa siasatan atas kandungan yang terdapat dalam pernyataan beramaran tersebut tidak bermerit. Seterusnya, nota-nota keterangan tidak menunjukkan bahawa perayu telah mengemukakan keterangan yang boleh dipercayai untuk menyokong pembelaannya dan untuk menyangkal dakwaan pengedaran atas imbangan kebarangkalian.

(3) Atas fakta-fakta dan undang-undang berkenaan kes ini, alasan-alasan yang dengan sendirinya adalah jelas. Fakta bahawa perayu telah ditahan dan didapati mempunyai kuantiti besar dadah-dadah telah membangkitkan ss. 2 dan 37(d) ADB 1952 untuk pembelaan dipanggil. Saksi-saksi pihak pendakwaan merupakan pegawai kerajaan dan apa yang mereka nyatakan secara umumnya berkenaan kredibiliti, mahkamah diwajibkan menerima keterangan menurut s. 114(e) Akta Keterangan 1950. Tiada keraguan bahawa pihak pendakwaan telah membuktikan kes *prima facie* pengedaran dadah pada peringkat pendakwaan. Sebaik sahaja pembelaan dipanggil, bebanan adalah atas perayu untuk menyangkal pengedaran atas imbangan kebarangkalian dan itu boleh dicapai dengan memberikan penjelasan yang munasabah yang disokong dengan keterangan bagi mewujudkan keraguan munasabah. Kewajipan ini tidak dilakukan oleh perayu. Alasan-alasan yang dinyatakan dalam keputusan di akhir kes pembelaan adalah mencukupi untuk memenuhi kehendak s. 308 Kanun Tatacara Jenayah tetapi tidak memadai untuk dilayakkan sebagai 'speaking jugdment'. Tiada ketidakadilan yang substansial telah berlaku dan dengan itu, sabitan adalah selamat.

Case(s) referred to:

Ahmad Mukamal Abdul Wahab & Ors v. PP [2013] 4 CLJ 949 CA ***(refd)***

Alcontara Ambross Anthony v. PP [1996] 1 CLJ 705 FC ***(refd)***

Badiaddin Mohd Mahidin & Anor v. Arab Malaysian Finance Bhd [1998] 2 CLJ 75 FC ***(refd)***

Kyros International Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri [2013] 3 CLJ 813 CA ***(refd)***

Mohd Johi Said & Anor v. PP [2005] 1 CLJ 389 CA ***(refd)***
Nurasmira Maulat Abd Jaffar & Ors v. Ketua Polis Negara & Ors [2014] 1 LNS 1263 CA ***(refd)***
Pembinaan Majujaya & 2 Ors v. Lau Tiong Ik Construction Sdn Bhd [2008] 1 LNS 29 HC ***(refd)***
Phiri Mailesi (Zambian) v. PP [2013] 1 LNS 391 CA ***(refd)***
Phrueksa Taemchim (Thailand) v. PP [2013] 10 CLJ 1 CA ***(refd)***
PP v. Oo Boon Khim [2013] 1 LNS 986 CA ***(refd)***
Rouhollah Ahmadzadeh Irandoust v. PP [2013] 1 LNS 1382 CA ***(refd)***
Tan Kim Leng & Anor v. Chong Boon Eng & Anor [19674] 1 LNS 167 FC ***(refd)***
Tunde Apatira & Ors v. PP [2001] 1 CLJ 381 FC ***(refd)***

Legislation referred to:
Courts of Judicature 1964, s. 60(1)
Criminal Procedure Code, s. 308
Dangerous Drugs Act 1952, ss. 2, 37(d), 39B(1)(a)
Evidence Act 1950, s. 114(e)
Federal Constitution, art. 5

For the appellant – James George Chelliah; M/s James George & Co
For the prosecution – Aslinda Ahad; DPP

[Appeal from High Court, Shah Alam; Criminal Trial No: 45A-204-2009]

Reported by Suhainah Wahiduddin

JUDGMENT

Hamid Sultan Abu Backer JCA:

[1] The appellant's appeal against conviction and sentence of death for trafficking of drugs came up for hearing on 28 August 2014 and upon hearing we dismissed the appeal. My learned brother Balia Yusof bin Haji Wahi JCA and my learned sister Tengku Maimun binti Tuan Mat JCA have read the draft judgment and approved the same. This is our judgment.

Charge

[2] The appellant was charged under s. 39B(1)(a) of DDA 1952. The charge reads as follows:

> Bahawa kamu pada 26 Jun 2009, lebih kurang jam 1.50 petang, di Balai Ketibaan Antarabangsa, Unit Khas Pemeriksaan Penumpang (UKPP), Lapangan Terbang Antarabangsa Kuala Lumpur, di dalam daerah Sepang, dalam Negeri Selangor Darul Ehsan, telah mengedar dadah berbahaya sejumlah 3,313.1 gram Ketamine dan dengan itu kamu telah melakukan suatu kesalahan di bawah s. 39B(1)(a) Akta Dadah Berbahaya 1952 yang boleh dihukum di bawah s. 39B(2) Akta yang sama.

[3] One of the main complaints by the appellant is that the learned trial judge has failed to provide grounds of judgment and in consequence the appellant says he was left in doubt as to whether there was judicial appreciation of his defence. In the instant case the appellant has given

A evidence on oath and tendered his cautioned statement and it was marked as exh. D35. The cautioned statement as per learned counsel, is a good '*Alcontara* Notice' and it was never rebutted by the prosecution and relies on a number of judgments to anchor this point to allege that the conviction is unsafe. The cases relied upon are as follows: (i) *Mohd Johi Said & Anor v. PP* [2005] B 1 CLJ 389; (ii) *Alcontara Ambross Anthony v. PP* [1996] 1 CLJ 705; (iii) *Ahmad Mukamal Abdul Wahab & Ors v. PP* [2013] 4 CLJ 949; (iv) *Rouhollah Ahmadzadeh Irandoust v. PP* [2013] 1 LNS 1382; [2013] 6 AMR 205.

[4] The learned Deputy Public Prosecutor says that the learned trial court judge has retired but has given grounds sufficient to satisfy s. 308 of the CPC. C That part of the submission reads as follows:

> (1) YA HMT yang mendengar kes ini telah bersara. Oleh yang demikian, tiada sebarang Alasan Penghakiman yang disediakan oleh YA HMT. Responden menghujahkan bahawa sabitan oleh YA HMT adalah selamat dan telah membuat dapatan yang betul dalam membuat keputusan D mensabitkan Perayu seperti pertuduhan.
>
> (2) Pihak responden ingin merujuk kepada m/s 162, Jilik 2 RR di mana YA HMT di akhir kes pendakwaan telah memutuskan:
>
> > Pihak Pendakwaan telah berjaya buktikan kes *prima facie*. OKT dipanggil untuk membela diri untuk peruntukan terhadap beliau.
>
> E
>
> (3) Di akhir kes pembelaan pula di m/s 205, Jilid 2 RR, YA HMT telah memutuskan:
>
> > Pihak Pembelaan telah gagal mendatangkan keraguan munasabah kepada kes pendakwaan. Dengan itu, Pendakwaan telah berjaya membuktikan satu kes ke atas OKT melampaui keraguan F menunasabah. Oleh itu, OKT Encik Rengarajan Thangavelu didapati bersalah dan disabitkan atas pertuduhan yang dibawa terhadapnya. Mahkamah memanggil pihak-pihak jika ingin untuk berhujah dalam mitigasi untuk tujuan sekiranya rayuan habis sebagai rayuan pardon.

G **[5]** We will deal in the later part of the judgment, the jurisprudence relating to how an appellate court have to deal with the issue when there are no grounds of judgment or no sufficient grounds of judgment and/or no speaking judgment.

[6] What is essential to note is that the appellate court in a criminal trial H as a general rule is not concerned whether the grounds of judgment is correct or wrong but only whether the judgment is safe. (See *Mohd Johi Said & Anor v. PP* [2005] 1 CLJ 389). If there is no grounds of judgment but only a decision has been delivered, it will be caught by s. 308 of the CPC and art. 5 of the Federal Constitution to earn an acquittal or an order of retrial. This is so I because there is a mandatory requirement under the law in criminal cases for grounds of decision to be delivered. Not providing grounds of judgment is a serious matter. If a Magistrate or Sessions Judge does not provide grounds

of judgment within a reasonable time and/or upon the direction of the High Court, then it will be a good ground for the dismissal of service of the Magistrate or Sessions' Judge itself. If a High Court Judge does not provide grounds, it will be a good ground for sanction under the code of ethics and/or removal of the judge pursuant to the procedure set out in the Federal Constitution. Failing to write grounds of judgment and only delivering a decision is a serious matter and inimical to the law and Federal Constitution. The trial court must always place at least a brief ground at the time the decision is pronounced, to *prima facie* satisfy the requirement set out in s. 308 of CPC which reads as follows:

> 308. When the appellant has complied with s. 307 the Court appealed from shall transmit to the High Court and to the Public Prosecutor and to the advocate for the appellant a signed copy of the record of the proceedings and of the grounds of the decision together with a copy of the notice and of the petition of appeal.

[7] The same requirement is not imposed by statute if it relates to an appeal only. An appellate court is not obliged to give grounds or full grounds of judgment if it confirms the decision of the trial court, whether it is civil and/or criminal case. However, if it reverses a judgment of the trial court, case laws impose an obligation to provide grounds for its decision more so if an appeal is pending before the apex court, as opposed to leave to appeal. (See *Kyros International Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri* [2013] 3 CLJ 813; [2013] 2 MLJ 650). In *Tan Kim Leng & Anor v. Chong Boon Eng & Anor* [1974] 1 LNS 167; [1974] 2 MLJ 151(FC), HRH Raja Azlan Shah observed:

> A party to the dispute is ordinarily entitled to know the grounds on which the learned judge has decided against him, and more so, when the judgment is subject to appeal. An appellate court will then have adequate material on which it may determine whether the facts are properly ascertained, the law has been correctly applied and the resultant decision is just.

Brief Facts

[8] In the instant case, it is not in dispute the appellant was caught with the bag containing drugs concealed in sarees. He has also given a cautioned statement explaining his side of the story. As the cautioned statement is in issue we will reproduce the essential parts verbatim and it reads as follows:

> Saya amat berkeinginan datang ke Malaysia untuk mencari pekerjaan. Saya telah membeli tiket dari penerbangan Sri Lankan Airlines di Tiruchirappalli kerana harga tiketnya yang lebih murah. Pada 25/6/2009 lebih kurang jam 05.30 petang saya bersama anak saya Vashinaraja bertolak ke Lapangan Terbang Chennai. Saya tiba lebih kurang jam 06.00 petang. Semasa saya menunggu penerbangan ada seorang yang pernah saya kenal bernama Pandian bertanya samada saya boleh membawa beberapa helai saree untuk satu majlis perkahwinan di Malaysia. Saya

telah diberitahu bahawa seseorang akan menghubungi saya dan menunggu di Lapangan Terbang Kuala Lumpur. Selepas itu saya telah bersetuju untuk membawa saree tersebut. Maka Pandian telah meminta kunci beg dan membuka beg. Beliau terus memasukkan lima helai saree ke dalam beg saya. Pandian telah bertanya saya samada saya mempunyai duit belanja di Malaysia. Saya mengatakan kepada Pandian saya Cuma ada seratus ringgit sahaja. Kemudian Pandian telah memberi saya RM300.00 untuk belanja saya di Malaysia. Lepas menerima wang tersebut saya berehat di Lapangan Terbang sementara tiba waktu berlepas. Lebih kurang pukul 07.00 petang saya telah daftar masuk beg yang saya bawa. Lepas itu saya berlepas ke Colombo pada lebih kurang jam 09.15 malam. Jam 10.30 malam saya tiba di Lapangan Terbang Colombo tetapi agak lewat maka pihak penerbangan telah membawa saya ke sebuah hotel untuk berehat tetapi beg telahpun di 'check-in'. Lebih kurang 04.30 pagi pada 26/06/2009, pihak penerbangan telah datang mengambil saya untuk berlepas ke Kuala Lumpur. Lebih kurang pukul 07.00 pagi, saya menaiki pesawat UL 314 dari Colombo ke Kuala Lumpur. Saya telah tiba di Lapangan Terbang Antarabangsa Kuala Lumpur pada jam 12.00 tengahari. Saya telah mengambil beg saya carosel dan menuju ke kaunter pemeriksaan kastam. Setiba di sana seorang pegawai kastam wanita telah mengarahkan saya mengimbas beg. Setelah diimbas seorang pegawai kastam lelaki telah mengarahkan saya membuka beg untuk diperiksa. Saya pun mengeluarkan kunci dari poket seluar dan membuka 'mangga' beg tersebut. Selepas itu saya membuka zip beg tersebut maka pegawai kastam telah mengeluarkan sehelai saree dari beg tersebut. Setelah pegawai memeriksa saree tersebut maka satu bungkusan telah jatuh dari lipatan. Pegawai kastam telah bertanya, apakah barang tersebut? Saya menjawab tidak tahu. Selepas itu pegawai tersebut telah mengeluarkan beberapa helai saree dan memeriksanya. Semua saree tersebut mengandungi bungkusan yang serupa. Kemudian mereka mengoyak sedikit pada salah satu bungkusan dan saya terlihat serbuk putih di dalamnya. Pegawai tersebut bertanya saya lagi, apakah barang tersebut? Saya menjawab, saya tidak tahu. Pada masa tersebut terdapat beberapa pegawai di situ. Pegawai yang membuat pemeriksaan tersebut telah memasukan semula barang tersebut ke dalam beg dan mereka membawa saya ke dalam sebuah bilik di pejabat.

Soalan 6 : Berapakah jumlah beg yang kamu bawa?
Jawapan 6 : Satu beg sahaja.
Soalan 7 : Siapakah yang mengunci beg kamu selepas saree itu dimasukkan?
Jawapan 7 : Pandian.
Soalan 8 : Adakah kamu menyimpan kunci beg kamu?
Jawapan 8 : Saya ada menyimpannya.
Soalan 9 : Sudah berapa kali kamu tiba di Malaysia?
Jawapan 9 : Sudah kali ke empat.
Soalan 10 : Bolehkah kamu memaklumkan tarikh kamu datang ke Malaysia?
Jawapan 10 : Februari, March, April dan Jun 2009.

Soalan 11 : Adakah kamu tahu barang yang dibawa adalah dadah? A
Jawapan 11 : Saya tidak tahu.

Soalan 12 : Adakah kamu melihat kandungan yang terdapat dalam lipatan saree tersebut?
Jawapan 12 : Saya tidak pernah lihat.

Soalan 13 : Kemanakah tempat yang kamu akan pergi semasa tiba di Malaysia? B
Jawapan 13 : Masjid India dan sewa bilik di sana.

Soalan 14 : Siapakah yang 'check-in' beg kamu?
Jawapan 14 : Saya sendiri.

Soalan 15 : Adakah kamu dijanjikan upah untuk membawa barang (saree) tersebut? C
Jawapan 15 : Bukan upah tetapi duit belanja.

Soalan 16 : Adakah pakaian yang kamu bawa adalah pakaian kamu?
Jawapan 16 : Saya punya.

Soalan 17 : Adakah kamu telah menghubungi seseorang semasa kamu tiba di Kuala Lumpur? D
Jawapan 17 : Tidak ada.

Soalan 18 : Adakah terdapat sesiapa yang menghubungi kamu semasa tiba di Malaysia?
Jawapan 18 : Tiada.

Soalan 19 : Adakah kamu tahu hukuman orang membawa mengedar dadah di Malaysia? E
Jawapan 19 : Saya tahu.

Soalan 20 : Setelah dibacakan rakaman pernyataan di atas. Adakah kamu ingin menambah atau meminda apa-apa pernyataan yang kamu berikan? F
Jawapan 20 : Saya tidak bersalah. Orang telah tipu saya. Saya tidak akan buat lagi.

[9] The appellant has filed a lengthy petition of appeal. However, before us the learned counsel had limited the submission essentially to three grounds and verbatim it reads as follows: G

(i) that the learned trial judge had misdirected himself when he failed to appreciate that the appellant's cautioned statement (marked as exh. D35) had raised reasonable doubt on the prosecution's case (ground 8 of the Petition of Appeal);

(ii) that the learned trial judge had misdirected himself when he failed to appreciate that the investigating officer (SP9) had admitted that he did not conduct any investigation on the contents of the said cautioned statement which had raised reasonable doubts on the prosecution's case (ground 9 of the Petition of Appeal); H

(iii) that the learned trial judge had not provided any grounds of judgment which had prejudiced the appellant (ground 10 of the Petition of Appeal). I

[10] In respect of ground (i) we have meticulously looked into the cautioned statement. There was no sufficient information for the police to investigate the case in relation to the person 'Pandian' who the appellant says gave the drugs to him. And also there was no sufficient information of the person who the appellant says the drugs were supposed to be handed over to by him as per 'Pandian's' direction. From the decided cases, the information in the cautioned statement without sufficient information of 'Pandian' and the purported recipient is a story and is not a good '*Alcontara* Notice' for placing an obligation on the part of the prosecution to rebut the same. The story if true, places the burden on the appellant to rebut trafficking on the balance of probabilities. That is to say, he may have to call 'Pandian' or the purported recipient to give evidence in support of his case. However, if he has given a good '*Alcontara* Notice' the obligation will be for the prosecution to track down 'Pandian' or the purported recipient to ascertain the truth of the appellant's story. At least the prosecution will be obliged to lead evidence to say what steps they have taken to verify the appellant's story to the satisfaction of the court. A bad '*Alcontara* Notice' does not help the appellant at all but imposes an obligation on the appellant to lead evidence in relation to his story to rebut trafficking, that too on a balance of probabilities. In *Phiri Mailesi (Zambian) v. PP* [2013] 1 LNS 391; [2013] 5 MLJ 780, the Court of Appeal through Hamid Sultan bin Abu Backer JCA on '*Alcontara* Notice' had this to say:

> It is pertinent to note that the '*Alcontara* Notice' must have sufficient particulars in the right perspective and not a vague notice where the prosecution will not be able to advance their investigation to rebut the defence story or version. It must also be given at the earliest opportunity at the material time of the arrest or at least upon counsel taking instruction from the accused to conduct its defence. In addition the defence's version should be put at the prosecution stage and the story must be maintained at the defence stage. There will be a duty placed on the judge even at the prosecution stage to positively evaluate the story of the accused relating to '*Alcontara* Notice' before evaluating the prosecution case and applying the maximum evaluation as *Alcontara* case places the onus on the prosecution to rebut or sufficiently explain that they have discharged that onus. In the instant case evidence will show that the defence has not given an '*Alcontara* Notice' in the right perspective.

[11] We find that the second ground that the investigation officer had not conducted any investigation on the contents of the said cautioned statement we find that it has no merits. If an investigation needs to be done, full information need to be given or at least on the face of the information any reasonable tribunal should be able to say that there is or are sufficient information to investigate the story further. The information on this issue must come from the appellant to earn an acquittal. There is no obligation in law in an offence of this nature where the statutory obligation to rebut

trafficking is on the appellant for the prosecution to 'dig' the information from the appellant. The test may be different in other Penal Code offences such as murder, etc and assessment of demeanour of witnesses may play an important part.

[12] We have also perused the notes of evidence in relation to the prosecution stage as well as defence stage. We did not find any sufficient evidence or information of 'Pandian' or the purported recipient, for the prosecution to investigate or explain to the court the failure to investigate or call rebuttal evidence at the close of the defence case to deal with the appellant's story as enunciated in *Alcontara Ambross Anthony v. PP* [1996] 1 CLJ 705 in respect of a good and valid '*Alcontara* Notice'. Further, the notes of evidence does not demonstrate that the appellant has led credible evidence to support his story and to rebut trafficking on the balance of probabilities.

[13] We do not find any merit at all in ground (i) and (ii) of the complaint above. As to the ground (iii) in relation to there being no grounds of judgment, we have in the earlier part of the judgment dealt partly in respect of the jurisprudence relating to 'no grounds of judgment'. In the case of *Pembinaan Majujaya & 2 Ors v. Lau Tiong Ik Construction Sdn Bhd* [2008] 1 LNS 29, Hamid Sultan JC (as he then was) has documented all the relevant cases in respect of 'no grounds', 'no sufficient grounds' and/or 'no speaking judgment' and had considered the Malaysian, Indian and English cases. We do not wish to repeat save to say that the instant case is not one where there is no ground at all. If there is no ground at all it will be in breach of s. 308 of the CPC. If there is a breach of s. 308, a conviction cannot be sustained at all as it will breach art. 5 of the Federal Constitution which says:

> 5. (1) No person shall be deprived of his life or personal liberty save in accordance with law.

[14] In such a case, the court will be duty bound to consider an acquittal or send it back for retrial as the conviction on the face of the record will be illegal. (See *Badiaddin Mohd Mahidin & Anor v. Arab Malaysian Finance Bhd* [1998] 2 CLJ 75; [1998] 1 MLJ 393). In the instant case and on the facts of the case, there is no statutory breach. Our reasons *inter alia* are as follows:

(i) The learned judge has given brief grounds to satisfy s. 308;

(ii) On the facts and the law in respect of the instant case the grounds is self speaking. In this case, the fact that the appellant was arrested and found with a large quantity of drugs will itself attract ss. 2 and 37(d) of the DDA 1952 for defence to be called. We do not wish to repeat the relevant cases and principles to attract ss. 2 and 37(d) as it has been documented in detail in the case of *Phrueksa Taemchim (Thailand) v. PP* [2013] 10 CLJ 1; [2013] 6 MLJ 808, through Hamid Sultan bin Abu Backer JCA. In addition, the prosecution witnesses are mainly government officers and whatever they say as a general rule as to

credibility the court is obliged to accept the evidence pursuant to s. 114(e) of Evidence Act 1950. (See *Nurasmira Maulat Abd Jaffar & Ors v. Ketua Polis Negara & Ors* [2014] 1 LNS 1263).

(iii) There is little doubt that the prosecution has established a *prima facie* case of trafficking at the prosecution stage. On the facts, the grounds stated by the learned trial judge is sufficient to satisfy s. 308 but not sufficient to qualify as a speaking judgment. Once the defence is called, the burden is placed on the appellant to rebut trafficking on the balance of probabilities and that may be achieved by giving plausible explanation supported by evidence to create a reasonable doubt. (See *PP v. Oo Boon Khim* [2013] 1 LNS 986). This duty has not been discharged at all by the appellant. On the facts the grounds stated for the decision after the end of the defence case is sufficient to satisfy s. 308 but not sufficient to qualify as a speaking judgment.

[15] When the threshold of s. 308 is satisfied, the appellate court cannot order an acquittal but can order a retrial but the judgment can only be set aside after the court is satisfied that it is not safe to convict. (See *Tunde Apatira & Ors v. PP* [2001] 1 CLJ 381). To do so, the court must follow the provision as set out in s. 60(1) of Courts of Judicature 1964 which reads as follows:

> 60. (1) At the hearing of an appeal the Court of Appeal shall hear the appellant or his advocate, if he appears, and, if it thinks fit, the respondent or his advocate, if he appears, and may hear the appellant or his advocate in reply, and the Court of Appeal may thereupon confirm, reverse or vary the decision of the High Court, or may order a retrial or may remit the matter with the opinion of the Court of Appeal thereon to the trial court, or may make such other order in the matter as to it may seem just, and may by that order exercise any power which the trial court might have exercised:
>
> > Provided that the Court of Appeal may, notwithstanding that it is of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has occurred.

[16] We have gone through the notes of evidence in detail. We are satisfied that no substantial miscarriage of justice has occurred and it is safe to convict. For reasons stated above, the appeal is dismissed.